IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-04-2008

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P.NOs.16636 OF 1995 & 22274 OF 2007
and
M.P.NOs.1 OF 2007 & 2 & 3 OF 2008

W.P.NOs.16636 of 1995

Sivakasi Region Tax Payers Association
(Regn.S.No.81/94),
Rep. by its Secretary .. Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Revenue,
Fort St. George,
Madras 600 009.

2. District Collector,
Kamarajar District,
Virudhunagar.

3. Sub-Collector,
Sivakasi.

4. Thanthai Periyar Nagar People'
Development Association,
(Regn.No.6/93), rep. by its
Secretary
(Impleaded as per order dated
24.7.2001 in WMP.362/96

5. The Commissioner,
Sivakasi Municipality, Sivakasi.
(Impleaded as per order dt.24.7.2001
in WMP.No.1335 of 2001) .. Respondents

W.P.No.22274 of 2007

Sivakasi Region Tax Payers Association

(Regn.S.No.81/94),
Rep. by its Secretary .. Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Revenue,
Secretariat,
Chennai 600 009.

2. The District Collector,
Virudhunagar District,
Virudhunagar.

3. The Secretary to Government,
Municipal Administration & Water
Supply Department,
Secretariat,
Chennai 600 009.

4. The Commissioner of Municipal Administration,
Chepauk, Chennai 5.

5. The Commissioner,
Sivakasi Municipality,
Sivakasi.

6. Tahsildar,
Sivakasi Taluk, Sivakasi West 626 124.

7. Parasakthi Nagar Ex-Servicemen Colony
Welfare Association, Rep. by its Secretary .. Respondents

W.P.NO.16636 of 1995 filed for issuance of Writ of Certiorarified Mandamus calling for the records of the 1st respondent in G.O.Ms.No.867 dated 13.9.1995 and quash the same and further direct the respondents to remove the encroachments in Siru Kulam Kanmai situated at Sivakasi Town in Survey No.579 (Old Number).

W.P.No.22274 of 2007 filed for issuance of Writ of Certiorari calling for the records pertaining to the impugned order in G.O.Ms.No.854, Revenue Department, dated 30.12.2006 issued by the first respondent and quash the same.

For Petitioner in
WP.16636/1995 : Mr.R. Janakiraman

For Petitioner in : Mr.N.R. Chandran
WP.22274/2007 Senior Counsel for
Mr.L.G. Sahadevan

For State : Mr.P.S. Raman,

Addl. Advocate General
Assisted by Mr.M. Dhandapani
Special Government Pleader

For Respondent-4
in WP.16636/1995 : Mr.M.V. Venkataseshan

For Respondent-5
in WP.16636/1995 : Mr. Venkatakrishnan

For Respondent-7
in WP.22274/2007 : Mr.R. Subramanian

Amicus Curiae : Mr.R. Subramaniam
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COMMON ORDER

P.K. MISRA, J

W.P.NO.16636 of 1995 has been filed by Sivakasi Region Tax Payers Association for issuing a writ of Certiorarified Mandamus for quashing G.O.Ms.No.867 dated 13.9.1995 and for a further direction to remove the encroachments in Siru Kulam Kanmai situated at Sivakasi Town in Survey No.579. W.P.No.22274 of 2007 has been filed by the very same Association for issuing a writ of Certiorari for quashing G.O.Ms.No.854 Revenue Department dated 30.12.2006.

2. The relevant portion of G.O.Ms.No.867 dated 13.9.1995, impugned in W.P.No.16636 of 1995, is extracted hereunder :-
"5. The Government considered the report submitted by the Commissioner for Land Administration. In the Siru Kulam Kanmai Poramboke, out of the 138 encroachments, 93 are residences, 36 are industries and 9 other encroachers. The above encroachments are near the banks of the Kanmai and they are there for the past 25 years. In this 102 encroachers were given Electricity connections, 2 encroachers were given water connection, 10 encroachers were given telephone connection. Apart from houses, there is one Mid-Day Meals Centre, Government Hostel for Ladies and a temple are there. When action was taken to remove the encroachments there was law and order problem and hence the action was stopped. Hence, even if action is taken to remove the encroachments, building with electricity, water and telephone connection, temple, workshop, ladies hostel, printer's Association, etc., would be put into difficulties and law and order problem may arise. Hence, taking into consideration of temple, Mid-Day Meals Centre, ladies hostel, building with electricity, telephone connection, the Government considers it difficult to remove the encroachments.
6. Taking into consideration what is stated in para 5 above, as a special measure the Government relaxes the earlier prohibition of assignment of Kanmai Poramboku land and the Government orders to convert the 138 encroachments in Siru Kulam Kanmoi Poramboku, Sivakasi Town into 'Natham'."

3. The purport of the subsequent G.O., is for the grant of patta to the persons who have constructed house and occupied the Government land by encroachment, subject to certain conditions.

4. The basic allegations as contained in the latter writ petition are as follows :-
4.1 Sivakasi is an industrial town, which is thickly populated with a total area of 7 sq.kms. There is acute shortage of water supply and people depend upon ground water. There is no perennial river flowing in Sivakasi Town and nearby, but there are two tanks in Sivakasi named Periya Kulam Kanmai and Siru Kulam Kanmai. Periya Kulam Kanmai is located on the western side of the Town and receives water from Sengulam Kanmai which is situated nearby Anaiyur village. When Periya Kulam Kanmai overflows, excess water flows into Siru Kulam Kanmai in one side and Thattar Oorani on the other side and to Parai Kulam Oorani on another side. Thattar Oorani has been encroached and is named as Jail Singh Nagar. The overflow water from Siru Kulam tank flows to Sivan Koil Oorani. This area and the nearby Mayanam (cremation ground) are encroached upon and Kudiyiruppu (residential area) is named as Anna Colony. When Sivan Koil Oorani gets filled up, excess water proceeds to Pari Kulam Oorani and the water passes through the Odai in Muslim Middle Street, Muslim Odai Street, Kathan Street, New Road Street, Potha Marathu Oorani and goes out of the town. These Periya Kulam and Siru Kulam, Thattar Oorani, Sivan Koil Oorani and Potha Marath Oorani are the largest reservoirs in the Sivakasi and the main source of ground water and water supply.

4.2 Due to encroachments in Sivan Koil Oorani and the channels in Muslim Middle Street, Muslim Odai Street, all the water bodies do not get water to its full level. During the year 1996, due to heavy rains, Siru Kulam tank had become full. The authorities had blocked the water course from Periya Kulam to Siru Kulam with sand bags which resulted in flooding of water in the main roads of Sivakasi. In para 7 of the writ petition, the petitioner has indicated regarding various encroachments with classification of land.
4.3 Even though efforts were made by the citizen groups regarding removal of encroachments and various representations were sent, the Government of Tamil Nadu issued G.O.Ms.No.2162 dated 8.12.1989 to regularise the encroachments in Siru Kulam tank.
4.4 Subsequently, taking such earlier G.O., as precedent, the Government issued G.O.Ms.No.867 dated 13.9.1995 regularising 138 encroachers in Siru Kulam tank. Such illegal regularisation was challenged by the petitioner's Association in W.P.No.16636/95 and the High Court had granted stay for issuance of patta in respect of 138 encroachers. After repeated representations, encroachments were removed on 5.2.2002 and the Commissioner of Sivakasi Municipality and the Revenue Divisional Officer by their letter dated 7.2.2002 and 12.2.2002 respectively had permitted the petitioner's Association to put up barbed wire fence on the Southern side of Siru Kulam tank so that the further encroachments could be prevented. It is asserted that the petitioner's Association had spent Rs.1,50,000/- for the aforesaid purpose.
4.5 Subsequently, during the year 2003, such Association had sent a petition to the State Government to initiate steps for ensuring the rain water to reach Siru Kulam and Periya Kulam tanks without any obstruction or hindrance. Such petition was considered by the "Petition Committee" of the Tamil Nadu Assembly and the Government had recommended removal of encroachment in the channels leading to Siru Kulam and Periya Kulam by the concerned Revenue officials as well as the Municipal Commissioner. The Municipality in its report had admitted that there were lot of encroachments in the channels leading to Siru Kulam and Odai's in Muslim Middle Street, Muslim Odai Street, Kathan Street and New Road Street, which were all encroachments in the Government poramboke odai lands and further such encroachments have been removed in a phased manner. Such reply letter dated 6.1.2004 has been referred to by the petitioner in the writ petition.
4.6 In view of the direction issued by the High Court to the local bodies to remove all illegal encrachments in the water courses, the Commissioner of Municipal Corporation has issued a special circular letter No.41869/2005/TP2 dated 15.7.2005, but Sivakasi Municipality based upon such circular, issued an urgent circular bearing No.8093/2005/F1 dated 21.7.2005 to the subordinates to identify the encroachments in the water bodies and to remove the same. It is alleged that instructions had remained only as instructions on paper without any concrete action.

4.7 Sivakasi Nagarmakkal Nala Pathugappu Sangam, consisting large number of encroachers in different colonies and roads, had filed W.P.(MD)No.2947 of 2005 in Madurai Bench with a prayer not to demolish, dispossess and evict the encroachers without issuing notice or following the due process of law. The High Court disposed of such matter stating that action can be taken only by following the Full Bench decision in WP.(MD)Nos.1964 and 2100 of 2005 dated 26.4.2005 (since reported in 2005(2) CTC 741 [Ramaraj V. The State of Tamil Nadu & others]).
4.8 It is also stated that O.S.No.90 of 2005 has been filed by some members of welfare sangam of Arignar Anna Colony, which is pending before the Civil Court. Even though the petitioner Association had requested the Collector to furnish information regarding the steps taken for eviction of the encroachers on water bodies and public places under the Right to Information Act, 2005, no information had been furnished. However, the Commissioner, Sivakasi Municipality had replied by letter dated 23.2.2006 that the Municipality was not the appropriate authority to remove the alleged encroachments and the concerned Department has to be contacted.
4.9 In March, 2005, in Rani Anna Colony, which is a Mayanam (cremation ground), encroachers have been evicted and when they attempted to again encroach, the petitioner's Association had submitted a representation dated 3.1.2007 and the Revenue Divisional Officer had sent a reply addressing the Commissioner to see that no new encroachments would come up, where old encroachers had been removed. However, according to the petitioners, no effective steps had been taken by the respondents. Meanwhile a resolution was passed by the Sivakasi Municipality on 28.3.2007 on the pressure exerted by the encroachers for converting the water spread and water tank areas as 'Natham' without taking into account the usage of the water spread area.
4.10 The petitioner also averred that in the meantime the Government has issued G.O.Ms.No.854 dated 30.12.2006 which enables the regularization of the encroachments even in water spread, water tank and irrigation sources. The petitioner, therefore, challenges such G.O. on the ground that the G.O. was contrary to the principle of law declared and laid down by the Supreme Court and the High Court. It is contended that all public water works, springs, public reservoirs, tanks, etc., vest with the Municipal Council under Section 125 of the District Municipalities Act and Section 84 of the Tamil Nadu Panchayat Act and, therefore, it is the duty of the Government to protect the same and the Government cannot divest the same by any administrative instruction.

5. In the connected W.P.No.16636 of 1995, which is pending since 1995, after making similar allegations regarding water bodies, it has been asserted that G.O.Ms.No.867 dated 13.9.1995 had been issued regularising the encroachments made by 138 persons mechanically and arbitrarily and without following any procedure contemplated. For the aforesaid reasons, prayer had been made in both the writ petitions, which have already been noticed.

6. In W.P.No.16636 of 1995, a counter affidavit had been filed by Respondent No.2, the District Collector. In such counter, it is indicated that Sivakasi Vilage in Kamarajar District was an old Ryotwari village and an extent of 16.55.0 Hectares in S.No.579 and was classified as "Siru Kulam tank poramboke". An extent of 7.07.0 hectares of land has been recognized as "wet" ayacut under the tank which is within the limits of Sivakasi Municipality. During the Municipal survey, the above tank poramboke had been surveyed as T.S.No.6 of Block 9 of Ward 'B' of Sivakasi Municipality. Such entire ayacut area under the tank has now been converted as built up area and no wet land under the ayacut is available for the purpose of cultivation. There are large number of encroachments on the tank bund and the entire wet ayacut area having been converted as buildings and streets, the water of the tank has not been utilised for agricultural purpose for the past many years. There are large number of encroachments on the tank bund for more than 20 years.
6.1 There are 138 encroachments on the poramboke land excluding two Vinayaga temples. In G.O.Ms.No.2162 (Rev) dated 8.12.1989, an extent of 3 cents of land was assigned to one person. After that eviction of the remaining encroachers was not possible, since it was felt that it would amount to law and order situation in Sivakasi town as such encroachments were in existence for

more than 20 years. Such encroachers have already got electricity connection, telephone connections, etc.. Taking into consideration the fact of prolonged period of encroachment and also the fact that severe law and order problem may lead in case of eviction, the Government decided and ordered in G.O.Ms.No.867 dated 13.9.1995 for regularisation of the encroachments.
6.2 The allegation relating to acute water supply has been denied by stating that drinking water has been supplied to them by Sivakasi Muicipality from Vaipar River and regular drinking water supply is done from the water stored at Vembakottai Reservoir. It has been further asserted that due to inadequacy of rain and continuous failure of monsoon for the past 16 years (counter affidavit was signed in January, 1996), Siru Kulam tank has not received any surplus flow from Periya Kulam tank and Siru Kulam tank had received rain water from the dry lands situated on the northern side of the tank, but no water was received during the last few years due to failure of monsoon. The encroachments had been made only on the eastern and southern bunds and not on the inner part of the water course area and the allegation that the water cannot come to Siru Kulam tank and it is not filling to its full level due to the encroachments have been denied.
6.3 The eviction of encroachments could not be made due to law and order situation and G.O.Ms.No.867 dated 13.9.1995 was issued taking into account the prolonged period of encroachments. Other details are furnished relating to supply of water, which would not be required for the purpose of deciding the present case.

7. In W.P.No.22274 of 2007, a counter has been filed on behalf of Respondents 1 to 4, wherein it is indicated that the Government has been granting house site to the poor people and to regularize the house site encroachments made by the poor downtrodden people, the Government evolved a scheme and issued G.O.Ms.No.75 dated 5.2.2000, whereunder the Government constituted a Committee for giving recommendation and on recommendation of such Committee, the Government has ordered "One Time Scheme" in G.O.Ms.No.168, Revenue Department dated 27.3.2000 for regularization of house sites encroachments of more than 10 years in Government poramboke lands which were not used for the purpose of their classification and were not required for any other Government purpose.
7.1 It is further indicated in paragraph 5 as follows :-
"5. It is submitted that based on the orders passed by this Hon'ble Court in W.P.20186/05, dated 27.6.2005 and the Madurai Bench of this Hon'ble Court in W.P.689/2005, dated 2.2.2005, the Government ordered the revival of the scheme in G.O.Ms.No.854, Revenue dated 30.12.2006. As per the Government Order, the Collectors have to take into consideration the following, while regularizing the encroachment for granting patta.

1) Judgment of this Hon'ble Court in W.P.No.20186/05, dated 27.6.2005 and by the Madurai Bench of this Hon'ble Court in W.P.689/2005, dated 2.2.2005 should be taken into account.
2) Resolution of the local bodies such as, Panchayats and Municipal Council, and the consent of the District Senior Officer of the poramboke lands concerned should be obtained.
3) The District Level Committee headed by the Collector should ensure that the poramboke lands sought to be converted as 'Natham' especially Water course poramboke are not at all required for public and government purpose in future."
7.2 It has been further stated that after obtaining Municipal Council's resolution passed on 31.1.2004 and 30.3.2007 and after field inspection and enquiry, a proposal was formulated by the Tahsildar for regularization of encroachments of dwelling houses for more than 10 years in T.S.No.33, Block 8, Ward A of Sivakasi Town measuring an extent of 23,000 sq.Mtrs. or 5.68 acres classified as Mayanam and Odai. There were 353 encroachments out of which 341 encroachments by way of houses can be regularised under this scheme and a proposal was forwarded to the Revenue Divisional Officer on 12.4.2007. The Revenue Divisional Officer recommended for the grant of assignment to the 341 beneficiaries as per letter dated 14.4.2007. Though the site was classified as Mayanam and Odai in the Municipal Town Survey Land Records, it was not used as such for the past 30 years and in such site a well planned colony called Arignar Anna Colony with civic amenities have

been developed.

7.3 A District Level Committee headed by the District Collector inspected the site and the District Level Committee decided to change the classification of the land in T.S.No.33 Block 8, Ward 'A' of Sivakasi Town as Mayanam and Oidai into 'Natham'. The District Collector passed orders on 14.4.2007 for change of classification and directed the grant of house site in respect of 341 encroachers excluding 10 number of encroachments which was actually located in Odai. Such Odai has been used as road and a wide drainage channel has been formed along with Kamarajar Road. Notice directing them to remit the cost of land at Rs.3000/- per sq.ft., as per the guideline register had been sent to them on 30.6.2007. Out of 341 encroachers, 58 persons alone remitted the land cost and pattas were granted to such 58 persons on 16.6.2007 and 30.6.2007. The request of other encroachers in respect of water course and poramboke land in Sivakasi Town as per the details given was not considered for regularization.
7.4 The fact that there has been no surplus flow of water from the tank for the past 20 years due to inadequate rain and failure of monsoon has also been highlighted and it has been stated that Siru Kulam tank receives only rain water from the surrounding dry lands and such tank is not an irrigation tank and it has no ayacut area and the surrounding area has already been developed as built up portion. The channel that starts from Railway Feeder Road to Odai Street never got water supply from Siru Kulam and it serves as sewage channel for the nearby residents. It has been stated that though there was large number of encroachments in the area, such encroachments have not been considered for regularization under this G.O., except T.S.No.33 in Block 8, since those encroachments are blocking the supply channel which would lead to submergence of the nearby areas. T.S.No.33 in Block 8 is predominantly Mayanam Poramboke and partly Odai and is not at all used as Mayanam as it was in the midst of the thickly populated town area and the Municipality has a separate Mayanam. Various contentions raised regarding the invalidity of the G.O., on the ground that the G.O. is contrary to the various directions contained in the judgments of the Supreme Court and the High Court have been refuted.

8. The Sivakasi Municipality through its Commissioner has filed a separate counter affidavit. In such counter affidavit, it has been stated that Sl.No.1 Jailsingh Nagar, Thattayurani, Ward F, Block 2 is classified as Government poramboke oorani land. Puthu Street, Thangaiya Road, Ward D, Block 7, T.S.No.98 and Puthu Road Street, Ammankoil patti Street, Ward D, Block 7, T.S.No.121 are classified as Government poramboke waterbody (odai). It is further stated that Ward E, Block 9 to 11, T.S.No.108/1 does not appear to be available in the Town Survey records. Arignar Anna Colony, Ward A, Block 8, T.S.No.33 is classified as Government poramboke Mayanam, Odai. Anna Nagar, Ward B, Block 4, T.S.No.5 is classified as Sivakasi Nagaratchi Pillaimar Community cremation ground. Such land has been acquired by the Railways, which in turn gave Ward B, Block 4, T.S.No.5 an extent of 1.77 acres to be utilised as a cremation ground. The Municipality had passed Resolution No.588 dated 21.11.1984 giving assignment of the lands in S.No.3 to the encroachers residing therein. Sivankoil Garden, Ward A, Block 9, T.S.No.14 is classified as well and it is under the control of the revenue authorities. Siru Kulam Kanmai, Ward B, Block 9, T .S.No.6/1 is used within the maintenance of the Public Works Department and it is classified as Government water body poramboke.
8.1 It was further stated that the Collector, Virudhunagar District convened a meeting on 24.1.2002 and as per the guidelines all encroachments on the southern side of the tank was removed on 4.2.2002 and 5.2.2002 by the revenue authorities and the police authorities being assisted by the Municipality and the petitioners were permitted to raise a barbed wire fencing to prevent future encroachments. Pursuant to the meeting dated 28.5.2002 for removal of encroachments from the canals that supply water to Sivakasi from Periya Kulam, encroachment removal drive was conducted on 1.6.2002. The Municipal Council had passed a resolution on 22.3.2002 to cancel all the assignment of the lands given by the Collector and the State Government in the last 25 years over

tank porambokes abetting drainage and water waste. On 28.3.2007, resolution No.2126 has been passed observing that regularization should be permitted only after taking into account the lands to be allotted for waterway transport and roads.

9. The following questions arise for determination :-
(1) Whether the G.O.Ms.No.867 dated 13.9.1995 and the subsequent G.O.Ms.No.854, Revenue Department dated 30.12.2006 issued by the State Government are illegal, inoperative and liable to be quashed ?
(2) Whether a direction should be issued to the State Government to remove the encroachers ?

10. In (2001) 6 SCC 496 (HINCH LAL TIWARI v. KAMAKLA DEVI), it was observed :-
"13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature□s bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.
14. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation□s pride."

11. In (2006) 6 SCC 543 (SUSETHA v. STATE OF TAMIL NADU AND OTHERS), it was observed :-
"17. We may, however, notice that whereas natural water storage resources are not only required to be protected but also steps are required to be taken for restoring the same if it has fallen in disuse. The same principle, in our opinion, cannot be applied in relation to artificial tanks."

12. From these decisions of the Supreme Court, it is apparent that a duty has been cast on the State to protect the natural resources and to prevent ecological imbalances and at the same time the State is also required to pursue the policy of sustainable development.

13. A detailed discussion on the aspect is available in the decision of the Supeme Court reported in (2006) 3 SCC 549 :AIR 2006 SC 1350 (INTELLECTUALS FORUM, TIRUPTHI v. STATE OF ANDHRA PRADESH & OTHERS), wherein it has been observed as follows :-
"73. In the light of the above discussions, it seems fit to hold that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What this Court should follow is a principle of sustainable development and find a balance between the developmental needs which the respondents assert, and the environmental degradation, that the appellant alleges.
Public trust doctrine
74. Another legal doctrine that is relevant to this matter is the Doctrine of Public Trust. This

doctrine, though in existence from Roman times, was enunciated in its modern form by the US Supreme Court in Illinois Central Railroad Co. v. People of the State of Illinois where the Court held: "The bed or soil of navigable waters is held by the people of the State in their character as sovereign in trust for public uses for which they are adapted. * * *
The State holds title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State which does not recognise and is not in execution of this trust, is permissible. "
What this doctrine says therefore is that natural resources, which include lakes, are held by the State as a "trustee" of the public, and can be disposed of only in a manner that is consistent with the nature of such a trust. Though this doctrine existed in the Roman and English law, it related to specific types of resources. The US courts have expanded and given the doctrine its contemporary shape whereby it encompasses the entire spectrum of the environment."

14. The question is whether the State Government by issuing the impugned G.O., has exceeded its jurisdiction or has in any way violated any specific direction issued by the Supreme Court. It is trite proposition that any land which is not owned by a private person belongs to the State, obviously the State holds such property as Trustee not as the private property of the authorities or the officials or the party in power in a democratic set up. Since the land belongs to the State, the State cannot be denied the power of settling the lands with any person, of course by following a recognized procedure and not in an arbitrary manner. Even before issuance of G.O., the circulars issued by the Board of Revenue, which subsequently came to be known as Revenue Standing Orders (RSO in short), not only recognized the right of the State to settle any land but also to regulate the procedure to be followed. Such provisions are analysed hereunder with a view to test the arbitrariness of the subsequent G.O..

15. Revenue Standing Orders 15(38) refers to assignment of poramboke and reserved lands. RSO 15(38)(ii) refers to Water course poramboke, which is extracted hereunder :-
"(38) Assignment of poramboke and Reserved lands - (ii) Water course poramboke:- Great care should be taken to preserve the margins of canals, channels and streams. The transfer and assignments of such water course source porambokes can be ordered only by the Government in consultation with the Commissioner of Land Administration and the Chief Engineer (P.W.D.)."

15.1 RSO 16 deals with disposal of Tank-bed lands. Clause 2 refers to the procedure of disposal of tank-bed lands, which is extracted hereunder :-
"2. Disposal of tank-bed lands. - When a tank is removed from the list of irrigation sources and the ayacut thereunder transferred to dry or registered under some other source, the lands in the bed of the tank should be laid out into convenient plots of not less than half an acre each and sold by auction, subject to payment of the highest dry assessment current in the village or of the settlement assessment if the land has been classified and assessed since the abandonment of the tank. It should be stipulated in the sale notice that the assessment is liable to alteration at any general revision of the land revenue settlement of the district, and that Government reserve to themselves the right to a share in mines and quarries subjacent to the lands and that they reserve to themselves or to persons authorised by them the powers necessary for the proper working of the minerals such as the full and free liberty and right of ingress, egress and regress, etc., as detailed in part II of the model form of mining lease in Appendix IX, Chapter VIII of the Madras Mining Manual, subject to the payment or rendering of compensation to the surface owner for all damages that he may sustain by the exercise of such rights. Sales under this Order require the previous sanction of the Collector. The sales shall be held by the Tahsildar, Deputy Tahsildar or the Revenue Inspector subject to confirmation by the Divisional Officer. The Collector shall in each case nominate the Selling Officer."

15.2 RSO 26 deals with unauthorised occupation of Government land. A reading of RSO 26 indicates

that when there is unauthorised occupation, the Collector may levy assessment, he may impose penalty besides the assessment and he may order eviction apart from assessment and penalty. For eviction, the procedure to be followed has been indicated. Clause 4 deals with three categories. Sub clause (a) relates to the cases where the occupation is permanent or temporary is unobjectionable. Sub-clause (b) relates to cases where temporary occupation is unobjectionable but permanent occupation is objectionable and sub-clause (c) deals with the cases where occupation whether temporary or permanent is objectionable.

16. In the above context, the provisions contained in the Tamil Nadu Land Encroachments Act, 1905 are also relevant. As per Section 2 of such Act, all lands, except the lands classified as temple sites and house sites, vests with the Government. Sections 3, 3A, 4, 5, 5A, 5B provides for levy of assessment for unauthorised occupation in Government lands. The RSO obviously has to be read in the context of the aforesaid provisions. The provisions contained in such Act not only contains the power of the State Government to remove the encroachments but also includes the procedure to be followed and the remedy of the persons. The provisions of the Act do take away the inherent authority of the State, which is the owner of all the lands that is not vested with any person. However, with a view to prevent any arbitrary action on the part of the State, the provisions contain different regulatory measures and similarly the RSO, which have to be read as instructions supplemental to the provisions of the Land Encroachment Act and not in derogation, are also intended to lay down the guidelines and the procedure to prevent any arbitrary action.

17. The impugned G.O.Ms.No.854 dated 30.12.2006 indicates that earlier a Committee had been constituted to consider the question of assignment of house site to those who have put up houses and residing for more than 20 years on the lands not required by the Government and orders had been issued by G.O. (Per)No. 75 dated 5.2.2000. Similarly, G.O.(Per) No.168 dated 27.3.2004 and Government Letter No.11414 dated 12.4.2000 had been issued in respect of water body poramboke lands, grazing lands, cremation ground and roads which had remained unused and houses had been constructed for more than 10 years. With the above background and keeping in view the directions contained in W.P.Nos.689 and 20186 of 2005, the impugned decision in G.O. (Per) No.854 Revenue dated 30.12.2006 had been taken.

18. An analysis of the G.O.Ms.No.854 dated 30.12.2006 indicates that such G.O., is not applicable to temple poramboke lands and the poramboke lands surrounding the places of worship such as Church and Mosque. The lands, which are set apart not for the common public use and at present not in such utility and used as house sites, wherein houses have been put up for more than 10 years, can be assigned to the persons if proper documents are submitted to substantiate such user. Thus, from the G.O., it is apparent that the lands which are sought to be assigned are not required by the Government for their use and they have not been set apart for the common public use and not under such ultilisation. In fact para 1 of the G.O., also makes it clear that the Committee comprising of the District Collector, the District Revenue Officer, Revenue Divisional Officer and the senior most officer in the concerned Department are required to inspect the land. While taking any decision as to whether to assign the land or not, such Committee is also take into account the judgments rendered in two WPs referred to in the G.O. and after obtaining the resolution of the local administration council, the District Collector himself would regularize such encroachment on house sites. This G.O., has been issued in the context that hitherto all such matters were required to be placed before the State Government, but under the G.O., such power is now delegated to the District Collector. In order to ensure that no arbitrary decision is not taken by the District Collector, the G.O. insists upon the procedure to be followed and also requires inspection to be made.

19. Our attention was also drawn to the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (hereinafter referred to as "the Protection of Tanks Act" for convenience)

which was enacted to provide measures for checking the encroachment, eviction of encroachment in tanks and for the matters incidental thereto. Such Act has come into force with effect from 1.10.2007.

19.1 As per Section 2(a) "ayacut area" means area irrigated under any irrigation system within its commandability.

As per Section 2(c) "field drainage" means a water course which discharges waste or surplus water from the land.

As per Section 2(i) "supply channel" means a channel which receives water from a water source and supply to the lower down tank.

As per Section 2(l) "tank" means a storage structure built in for harnessing water for use and includes supply channel and its cross masonries, tank sluice, surplus weir, surplus course and its cross masonries, field channel and its cross masonries besides the drains and tank poramboke lands which are under the control and management of Public Works Department.

As per Section 2(o) "water spread area" means an area covered by water spread at full tank level.

19.2 Section 3 provides that the Government may direct that a survey be made of tanks in every district for the purpose of determining their limits in respect of area and that proper charts and registers be prepared setting forth the channel and all boundaries and marks and all other matters necessary for the purpose of identifying such limits.

Under Section 4, a Survey Officer can be appointed for surveying the tanks and under Section 6, such Survey Officer after completion of survey of tanks is required to prepare a chart and register pointing out the boundaries of the tanks and other necessary information. Under Section 6(2), the chart and the register prepared is to be handed over to the Officer of the Public works Department. Under Section 6(3), such Officer is required to issue a notice pointing out the boundaries of the tank. Under Section 7(1), such officer shall issue notice for removal of the encroachment if he is of the opinion that the encroachment should be evicted. Under Section 7(2), if encroachment is not removed, such Officer is empowered to remove the encroachment. Under Section 7(3) any crop raised on the land within the boundaries of the tank shall be liable to forfeiture and similarly any building or other construction if not removed by the encroacher after notice under Section 7(1), shall be liable to forfeiture.

19.3 Under Section 12, the Government may, in public interest, alienate any part of the tank poramboke land which is under the control of the Public Works Department without interfering with storage capacity and water supply.

20. In accordance with the procedure contemplated under Section13, which is the rule making power, the State Government has framed the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules as per G.O.(Ms)No.320 dated 28.9.2007.

20.1 Under Rule 2(d) "officer" means the Assistant Engineer or Junior Engineer or Overseer of the Water Resources Organisation of Public Works Department, in charge of the tanks lying in his jurisdiction for the purpose of enforcing the provisions of the Act and the Rules.

20.2 Under Rule 2(f) "survey officer" means the firka surveyor or town surveyor or any officer not below the rank of the survey officer of the Survey and Land Records Department.

21. The Act itself appears to be applicable to the tanks which are under the control and management of Public Works Department and the power of eviction has been conferred under the Rules on the Officer concerned. It is thus apparent that such provision is not ipso facto applicable to the lands under the control of the Revenue Department or other natural resources such as streams, rivers, etc., which are not under the management and control of the Public Works Department.

22. In our considered opinion, the contents of the G.O., should not be read in isolation. They must be read along with the provisions of the Tamil Nadu Land Encroachments Act, Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and more particularly along with the Standing Orders of the Board of Revenue . The Standing Orders of the Board of Revenue as well as the impugned G.O. should be read as complementary to each other and the G.O., should not be read as supplanting the Revenue Standing Order.

23. Condition No.3 of the G.O., makes it clear that the Committee headed by the District Collector should ensure that the lands proposed for regularization are not required to the Government for their use. Condition No.6 of the G.O. indicates that other rules which are pertaining to the grant of patta are also applicable to the scheme of assignment of house site patta. Condition No.7 clearly indicates that such scheme of granting house-site pattas would be as an one time measure. The question is whether such policy formulated by the Government and such scheme for regularizing some of the encroachments can be said to be arbitrary or contrary to any law requiring any interference by the court.

24. Since such G.O. has to be read along with other Rules as well as the existing Revenue Standing Orders, it is obvious that any land which is still continuing as water source either for the purpose of drinking or for the purpose of irrigation cannot be assigned. Similarly the Committee headed by the Collector is also required to find out whether such land is required by the Government or required for the public use. Since all these restrictions and safeguards have been envisaged, we do not find there is any inherent lacuna as such in the G.O.Ms.No.854 (Revenue) dated 30.12.2006.

25. The next question is whether such G.O., flies on the face of the various decisions of the Courts and more particularly the decisions of the Supreme Court. Before proceeding further on this aspect, it is necessary to notice the various decisions on the above aspect.

26. In 2005(4) CTC 1 (L. KRISHNAN v. STATE OF TAMIL NADU, REP. BY ITS SECRETARY, DEPARTMENT OF REVENUE (LAND DEVELOPMENT) CHENNAI AND OTHERS), a Division Bench of this Court, while relying upon the decision of the Supreme Court in (2001) 6 SCC 496 (cited supra), had issued a direction for removal of the encroachment on the land which has been recorded as Odai poramboke. Certain general observations were made emphasising upon the duty of the State Government to protect the natural resources as well as the water bodies with a view to prevent scarcity of water.

27. While there cannot be any dispute regarding the sentiments expressed in such decision, the question remains that if any particular pond or water channel, artificial or may be even natural has fallen into dis-use for a very long period, whether a direction can be issued for eviction irrespective of the question as to whether the persons who have encroached upon such land have acquired any right under the Law relating to limitation or under any policy of the State where the State Government in its wisdom decides to confer certain right on such persons.

28. We do not think it may be laid down as a matter of general principle of law that irrespective of the question as to whether the land in question is required for any public purpose or not, there should be eviction. It should not be understood for a moment that we are suggesting that all encroachments should be regularized or encouraged. But, if the State Government takes a conscious decision to regularize certain encroachments, which have continued for a pretty long period after the appropriate authority comes to a conclusion that such land is not required for any public purpose or for the State, can it be said that such policy is beyond the jurisdiction of the State Government. As

a matter of fact, a person by remaining in adverse possession for more than 30 years acquires a right over such property. This is because of the statutory provisions contained in Section 27 of the Limitation Act read with Article 112 of the Limitation Act, where the land belongs to the State.

29. In the present case, the State Government has thought it fit to regularize the encroachment in respect of residences which are in existence for more than 10 years. In that sense it may be true that those persons had not yet perfected their title by adverse possession. However, if the State Government in its wisdom decides to confer right on such persons even though they were yet to acquire such right by prescription, it cannot be said that such policy is per se arbitrary.

30. However, whether such policy is arbitrary or not is required to be examined in the context of the duty of the State to protect environment and to protect the Society. The G.O. makes it amply clear that only where the environment is not affected in the sense that the area is not actually not in use as Eri (lake) or water source either natural or artificial and not required for any public use and for the use of the State, then only the property can be settled.

31. The contention of the learned counsel for the petitioner to the effect that once the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act has come into force, without first identifying the tanks, the question of regularization of encroachment does not arise and only when such tanks or other water bodies are identified, the question of regularization of encroachment may arise and in view of such encroachment, the G.O. must be held to be inoperative.

32. In the light of the above discussion, W.P.No.22274 of 2007 is disposed of with the following observations and directions :-

(i) G.O.Ms.No.854 (Revenue) dated 30.12.2006 is not illegal.
(ii) The above G.O. must be read along with the provisions of the Tamil Nadu Land Encroachment Act, the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act and the Standing Orders of the Board of Revenue.
(iii) The Committee before granting patta is first required to find out whether the provisions contained in the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act are applicable, in which event the question of eviction has to be considered in the light of the provisions contained in the said Act.
(iv) If the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act are not applicable, the Committee is required to consider whether appropriate action should be taken under the Tamil Nadu Land Encroachment Act, keeping in view the directions issued by the High Court in the judgment referred to in the G.O. or whether the land can be settled.
(v) Before settling the land, the requirements indicated in the impugned G.O. as well as the Revenue Standing Orders are to be kept in mind.
(vi) If it is decided to remove the encroachers, it can be done only by following the procedure contemplated under law as highlighted in the Full Bench decision in 2005(2) CTC 741 (cited supra).

33. So far as WP.No.16636 of 1995 is concerned, the impugned G.O.Ms.No.867 dated 13.9.1995, purports to regularize the encroachments, wherein residences have been constructed by 138 persons. As per the counter such encroachments were in existence for more than 20 years. In such counter it has been stated that though initially an extent of 7.07.0 hectares of land has been recorded as wet (ayacut) under Siru Kulam tank poramboke, entire wet (ayacut) area under such tank had been converted as built up area and no wet land under such ayacut was available at the time of filing counter for the purpose of cultivation. It has been further indicated that because of such change in user, the water of such tank was not utilized for the agricultural purpose for the past many years and the encroachments were on the tank-bunds.

34. The apprehension relating to lack of drinking water has been allayed in the counter by stating that drinking water is being supplied not from any ground water source, but from Vaipar river, which is 16 km away. In such counter, it is also indicated that surplus water from Periya Kulam tank used to come to Siru Kulam tank, but due to inadequacy of rain and continuous failure of monsoon for the past 16 years, Siru Kulam tank had not received any surplus water from Periya Kulam water tank and such tank had received rain water only from the dry lands situated on the northern side of the tank. Encroachments complained of in such writ petition were on the Southern side and not within the inner part of the water course area. It has been also stated that out of 16.55.0 hectares of tank poramboke land, only an extent of about 0.85.0 hectares in the tank-bund area has been converted to residential area by different encroachers, who continued to remain for a long period. It has been indicated that such encroachment was not likely to affect the ground water level. It has been further indicated that though such land has been subsequently entered in the Prohibitory Order book during the year 1977, due to subsequent change in user and keeping in view the fact that the user of the tank for irrigation was no longer required as the entire wet ayacut was converted into non-agricultural purposes, the Government had ordered for regularization of 0.85.0 hectares situated at tank-bund.

35. It is of course true that in the said counter it is also highlighted that eviction of encroachers would give rise to law and order problem, but such a contention cannot at all be countenanced as a valid reason for not removing the encroachments. It is quite well known that maintenance of law and order is in fact considered as one of the prime duties of the State and at times was considered as a sovereign function. In such a scenario, we do not think that the State is justified in projecting the likelihood of law and order situation as a ground not to evict the encroachers. While the State cannot take refuge under the pretext of law and order problem, the other considerations projected in the G.O. as well as highlighted in the counter clearly indicate that the State keeping in view the humane problem and more particularly the fact that 138 houses had been constructed, which are in existence for more than 20 years, had decided to regularise the encroachments, which on the peculiar factual situation cannot be characterised as so arbitrary as requiring the issuance of high prerogative writ of Mandamus.

36. Even though we are not inclined to issue a Writ in the nature of Mandamus as prayed for by the petitioner, we must highlight that it is also the duty of the State to see that the other law abiding citizens of the town are not put to avoidable harassment and inconvenience.

37. The main apprehension of the petitioner is that the supply of drinking water would be affected. This aspect has been allayed by the State Government by indicating that supply of drinking water is being drawn from Vaipar river. The State Government must ensure continuous supply of drinking water by whatever modern method available.

38. Apart from the above, the other main apprehension is to the effect that the low lying land through which surplus water flows to Periya Kulam would be obstructed, thereby creating untold misery in the township as there would not be any proper drainage of excess water. In the counter it has been stated that there has been failure of monsoon for a long period. However, from the photographs filed, it appears that there was heavy rainfall during the year 1997, which had resulted in many of the streets being flooded with rain water.

39. Therefore, even though we have thought it fit not to interfere with the G.O., we feel that it is necessary to issue a direction to the State Government to ensure proper drainage in the town by improving the drainage system and also by ensuring that no further obstruction is created by the encroachers or even by the Government in the area which has possibility of using as drainage

channel or water course. It is also made clear that the State Government should undertake construction of modern drainage system, preferably underground, to avoid any future inconvenience. This would be ensured as expeditiously as possible preferably within a period of one year from the date of receipt of a copy of this judgment. It is also made clear that the State Government should ensure that there shall be no further encroachments.

40. In the result, both the writ petitions are disposed of as indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

(P.K.M.,J) (K.C.,J)
29-04-2008
Index : Yes / No
Internet: Yes / No
dpk

To

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Revenue,
Secretariat,
Chennai 600 009.

2. The District Collector,
Virudhunagar District,
Virudhunagar.

3. The Secretary to Government,
Municipal Administration & Water
Supply Department,
Secretariat,
Chennai 600 009.

4. The Commissioner of Municipal Administration,
Chepauk, Chennai 5.

P.K. MISRA, J
and
K. CHANDRU, J

COMMON JUDGMENT IN WP.NOs.
16636/1995 & 22274 of 2007

29-04-2008